

Service Date: February 22, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF Central Montana)	UTILITY DIVISION
Communication's Implementation of 1+)	
IntraLATA Dialing Parity.)	DOCKET NO. D98.10.220
)	
)	ORDER NO. 6147

FINAL ORDER

INTRODUCTION AND PROCEDURAL BACKGROUND

1. On December 4, 1998, Central Montana Communications Inc. (Central) filed its Application for Approval of its IntraLATA Equal Access Implementation Plan (Plan) with the Montana Public Service Commission (Commission). Central's Plan requests approval of the procedures and processes it intends to use to implement 1+ intraLATA dialing parity (also known as intraLATA equal access).

2. Central filed its Plan in response to a bona fide request (BFR) it received from AT&T Communications of the Mountain States, Inc. (AT&T) on October 6, 1998. AT&T's BFR requested that Central implement intraLATA equal access in all its exchanges.

3. The Commission has adopted rules for intraLATA dialing parity implementation in Montana. 1998 Mont. Admin. Reg., No. 7, at 983-1003 (April 16, 1998) (the "dialing parity rules" or "rules"). See ARM 38.5.4101 through 38.5.4120. ARM 38.5.4120 requires Central to implement intraLATA dialing parity pursuant to a Commission-approved plan.

4. ARM 38.5.4120(1) allows interested parties a reasonable opportunity to comment on a LEC's intraLATA equal access plan. On January 14, 1999, AT&T filed the only comments in this proceeding.

5. Following a review of Central's Plan the Commission makes the following findings and conclusions.

FINDINGS OF FACT AND COMMISSION DECISION

6. The Commission established the intraLATA equal access implementation rules "to provide guidelines and procedures for the commission to carry out its duties pursuant to the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)." ARM 38.5.4101, entitled "SCOPE AND PURPOSE OF RULES." Subsection (2) provides further indication of purpose in adopting the rules:

. . . The commission imposes this subchapter to encourage competitive entry, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The rules were adopted after giving opportunity to comment to all interested parties. They reflect a careful, reasoned consideration of all comments received, both in response to AT&T's original petition for the rulemaking and in response to later formal rulemaking inquiries. They were adopted specifically for implementing intraLATA equal access in Montana.

7. ARM 38.5.4120(1) states that ILECs "shall file their toll dialing parity plans carrying out the intraLATA equal access presubscription implementation rules set forth in ARM 38.5.4101 through 38.5.4116." ARM 38.5.4120(1) also provides that interested parties who wish to comment on a LEC's toll dialing parity plan shall have a reasonable opportunity to do so.

8. ARM 38.5.4120 provides that Central's Plan must describe how ARM 38.5.4101 through 38.5.4116 will be carried out and include information addressing the following:

- (a) detailed information explaining how and when carriers will be notified of the implementation schedule;
- (b) the language to be used in and the manner of distribution of, the customer notification letter;
- (c) a description of Central's anticipated cost of implementation, including Central's specific implementation costs, the vehicle that Central intends to use to recover implementation costs, and the cost recovery time frame; and
- (d) a description of Central's proposed business office practices and sample scripts that demonstrate how its business office personnel will handle customer-initiated business office contacts with Central in its role as a local exchange provider in a competitively neutral manner following implementation.

We address the general subtopics of intraLATA equal access implementation with respect to Central's Plan below:

A. Part II. Implementation Schedule

9. Central's scheduled implementation date for all of its exchanges is April 6, 1999. Central proposes to implement a slightly modified "2-PIC" carrier selection methodology rather than the full "2-PIC" carrier selection methodology envisioned by ARM 38.5.4103(2). All residential, business and payphone customers will be offered intraLATA equal access via Central's 2-PIC method. However, if the subscriber remains with the present intraLATA carrier, intraLATA calls will be handled by both U S WEST and Central. This is explained in more detail below.

B. Part III. Carrier Notification Procedures and Customer Lists

10. *Carrier notification:* ARM 38.5.4120(3) requires Central to provide notice to all registered interexchange carriers no less than 120 days prior to the actual implementation date. The notice must include terms and conditions of participation, ordering procedures and the implementation schedule. All carriers wishing to participate in presubscription must respond to

Central within 30 days. Central will respond to each responding interexchange carrier within three business days.

11. Carrier notification was bifurcated from Central's Plan in order for Central to meet the 120 day deadline required by ARM 38.5.4120(3). The Commission approved Central's carrier notification language on December 15, 1998.

12. The Commission's approval of carrier notification permitted Central to notify registered carriers by means of a Commission-established electronic mailing list or "listserv" in lieu of first class mail. Central elected to use the electronic "listserv." The Commission required Central to mail its participation form via first class mail to carriers who could not be contacted in this manner.

13. *Customer lists:* ARM 38.5.4105(2) requires a LEC or primary toll carrier to make available to all registered carriers that intend to offer equal access a complete list of the primary toll carriers customer's by name, address and phone number within 45 days of receipt of a BFR. Central's Plan did not address this issue. Therefore, the Commission requires that Central make available such list to all registered carriers that intend to offer intraLATA equal access. Charges for such list shall be cost based and nondiscriminatory.

14. *PIC change requests:* Central's Plan does not state when it will begin accepting letters of authorization (LOAs) or customer requests to change an intraLATA carrier. ARM 38.5.4116(1)(e) requires LECs to accept LOAs within 60 days prior to implementation. Central is required to begin accepting LOAs and customer requests for an intraLATA carrier selection beginning 60 days prior to implementation. In cases of multiple LOA submissions, the last dated LOA shall be processed. Central shall process LOAs that conform to ARM 38.5.3801 through

ARM 38.5.3810, the emergency slamming rules adopted by the Commission in Docket No. L-99.1.1-RUL, and § 69-3-1304, MCA.

C. Part IV: Customer Notifications, Education, and Safeguards

15. Customer notification is addressed in several of the Commission's rules. ARM 38.5.4120(1)(b) states that Central's Plan must describe how notification to end users will be done. The implementation plan also must include the language Central will use in its customer notification letter and describe the manner in which the letter will be distributed.

16. ARM 38.5.4105(4) requires all informational materials, forms and scripts to be "complete, clear and unbiased." It requires local exchange carriers to promptly make any changes required by the Commission before using them. *See* ARM 38.5.4105(4). Pursuant to ARM 38.5.4104 and at least 30 days prior to its scheduled implementation, Central must provide written information to its customers which describes intraLATA dialing parity and explains presubscription procedures. Information provided pursuant to ARM 38.5.4104 shall also inform customers with existing interLATA PIC freezes on their accounts that their freeze will extend to their existing intraLATA toll carriers until the end users take action to change.

17. Central's Plan does not inform end users that their current interLATA PIC freeze will extend to their intraLATA PIC account when intraLATA dialing parity is implemented. Until intraLATA dialing parity is implemented, all 1+ intraLATA calls placed between Central's exchanges are carried by Central and intraLATA calls from a Central exchange to a non-Central exchange are carried by U S WEST Communications, Inc. (U S WEST). Subscribers with PIC freezes for interLATA calls will have their intraLATA PICs frozen to Central and U S WEST, respectively.

18. *Existing customer notification:* Central's Plan states that it will provide written notification to its customers describing intraLATA dialing parity and explaining presubscription procedures. Central will provide customer notification via direct mail or as a "bill stuffer" prior to March 6, 1999. Central attached as Exhibit A its proposed format to notify customers. Central's proposed customer notification does not inform them about PIC freezes and how to change a PIC if the end user has a PIC freeze on his or her account. Central's customer notification letter must include language that informs customers that an existing interLATA PIC freeze will extend to their intraLATA PIC.

19. Central's customer notification letter does not inform end users that they must take affirmative action to change their intraLATA carrier. Central's customer notification letter must inform end users that action is required to change an intraLATA carrier. Further, Central's customer notification letter must also inform end users that if no action is taken their intraLATA calls will continue to be carried by their current intraLATA carriers. The remainder of Central's customer notification letter contains a good explanation of intraLATA 1+ presubscription that should help its customers understand this often-confusing concept.

20. Central's Plan provides that a list of all participating registered interexchange carriers who have responded during the 30-day period following Central's carrier notification and their toll free telephone numbers will be attached to the customer notification. The notification provides procedures for changing from the present intraLATA carriers. Central's notice to end users, with the modifications discussed above, will provide sufficient information to educate customers on intraLATA dialing parity and the procedures for requesting a PIC change.

21. *New customer notification:* Central's Plan provides that any new customers who commence local service after the mailing to existing customers and before equal access presubscription is implemented shall be provided information from Central about their carrier selection options at the time they sign up for local service. Customers who subscribe to local service after March 5, 1999, but prior to April 6, 1999, will also be provided a copy of the written notification prepared for existing subscribers.

22. These new subscribers may select both their primary interLATA and intraLATA carriers or be assigned "no-PIC" status. Central did not address waiver of PIC charges for customers who do not choose a PIC prior to new service installation. Presently, Central waives charges for interLATA PIC selections for 30 days after new service is installed and has indicated informally that it will follow this practice for intraLATA PIC selections as well. The Commission finds this to be in the public interest and requires this modification to the plan.

23. *Waiver period:* ARM 38.5.4111(1) states that "no charge shall be imposed for a customer's initial selection of a primary intraLATA carrier. Each LEC shall allow customers to change their selection of a primary intraLATA carrier one time only at no charge within 90 days following implementation of intraLATA dialing parity in an exchange."

24. Central's Plan states that no charge will be imposed for 90 days following customer notification. This language, coupled with the customer notification procedures outlined in ARM 38.5.4104, would effectively limit the waiver period to 60 days and is not consistent with Central's customer notification letter. Central must allow its customers to select an intraLATA carrier once without charge within 90 days following the implementation of intraLATA equal access. Subsequent changes shall be assessed pursuant to ARM 38.5.4111.

25. *PIC charges:* ARM 38.5.4111 states that PIC change charges shall be “the same as those imposed for changing interLATA carriers.” Central’s Plan proposes to charge the following for PIC changes: (1) \$5.00 to change either an interLATA or intraLATA PIC, (2) \$7.50 to simultaneously change interLATA and intraLATA PICs to the same carrier, and (3) \$10.00 to simultaneously change interLATA and intraLATA PICs to two separate carriers. These charges do not comply with ARM 38.5.4111 and are not approved. Until Central demonstrates to the Commission that its PIC change costs support a higher charge, Central shall charge the applicable rates outlined in ARM 38.5.4111.

26. *Customer safeguards:* ARM 38.5.4116 requires that a LEC handle a customer request to change an intraLATA carrier in a competitively neutral manner (i.e., in the same manner as a PIC change from one competitor to another). Central’s Plan does not address this issue. Past Commission orders require LECs to process customer requests for changes of their intraLATA and/or interLATA carriers. Therefore, Central is required to process all PIC change requests from an end user in a competitively neutral manner pursuant to ARM 38.5.4116.

27. *Handling customer contacts/Business office practices:* ARM 38.5.4116 provides for safeguards to ensure that the development of intraLATA competition will not be impeded by LEC practices following equal access presubscription. Subsection (1)(a) requires that Central’s customer information and procedures used to provide new customers information about their carrier selection options when they sign up for service be competitively neutral and approved by the Commission prior to their use.

28. Central’s Plan states that its representatives will inform new local exchange end users of their right to select the intraLATA carrier of their choice and, if they make no choice, they will be required to dial a carrier access code to place these calls. New and existing

customers may communicate their choices of carriers directly to Central through the local business office or they may do so indirectly through their selected carriers for either interLATA or intraLATA toll.

29. For all customer-initiated contacts regarding local service matters, ARM 38.5.4116(1)(b) includes important safeguards. It provides, “When handling customer-initiated contacts regarding local service matters such as a change in service, [LEC] business office personnel may not engage in promotional efforts for the local exchange carrier’s toll service offerings.” Subsection (1)(c) further provides that when a customer contacts a LEC’s business office to change the PIC from the LEC to a competitor, “the transaction must be handled in a neutral manner (i.e., in the same manner as a PIC change from one competitor to another).”

30. Central states that it will handle all customer-initiated contacts for PIC changes in a neutral manner. However, Central’s Plan does not address how interexchange carrier’s names will be presented to the requesting end user. Further, many of the Commission’s previously expressed concerns about contact handling by local exchange carriers who provide intraLATA toll service apply to Central because Central provides intraLATA toll service to its customers. Therefore, the Commission imposes some requirements for these contacts.

31. Central is required to provide, in random order, the names of all carriers providing intraLATA interexchange service in its area. The random list shall be scrambled at least once per month.

32. In addition, ARM 38.5.4105(4) requires Central to provide proposed business office scripts to the Commission for review as part of its implementation Plan. The rule requires that the scripts be filed so they can be reviewed by the Commission prior to approval or modification of the Plan. Central is required to submit the scripts its customer service

representatives will refer to and will be trained to use to discuss intraLATA dialing parity for new service requests and customer contacts for changes in service other than “general service” contacts.

33. Central submitted the following script:

You are now able to choose an interexchange carrier to handle your long distance intraLATA as well as interLATA calls. Choosing your preferred intraLATA carrier means that a special access code will no longer be required to have that carrier handle those types of long distance calls. There are several carriers available and if you already have a preference I can take your request now. Or, if you would prefer, I can read the list of carriers available in your area.

Central’s script is sufficient to advise customers of their choices for intraLATA carriers and is competitively neutral as required by Commission rule.

34. The Commission recognizes that a script will not be appropriate for all calls.

Some contacts may require Central’s representatives to adapt their conversation based on individual circumstances. The script provides the necessary information, however, and as long as the representative conveys the information included in the script, such deviations are acceptable.

35. The Commission has imposed marketing restrictions for local exchange carriers who provide intraLATA toll. Central appears to operate under a unique situation due to conditions required by U S WEST Communications, Inc. (U S WEST) with the sale of its exchanges to Central. Central provides in-region intraLATA toll to its subscribers and other intraLATA toll is provided by U S WEST (that is, intraLATA toll from Central’s subscribers that terminates in non-Central exchanges). This multi-PIC arrangement will remain in place for end users opting to remain with their present intraLATA carriers. However, end users who elect to change to another participating interexchange carrier for intraLATA toll will be under the standard “2-PIC” plan. Therefore, reasonable LEC restrictions related to marketing on customer-

initiated calls to Central's business office apply. The Commission concludes that it is reasonable to prohibit Central from initiating marketing and promotional activities for its own intraLATA services on contacts for new service, transfers of service and number changes.

D. Part V: Costs Recovery

36. Central's Plan states that it will incur incremental costs to implement intraLATA dialing parity. Major cost categories cited by Central include: (1) switching upgrade to allow 2-PIC presubscription, (2) support systems, (3) customer notification, (4) office personnel training, and, (5) implementation activities to migrate subscribers to their carrier of choice. All these costs are recoverable pursuant to ARM 38.5.4115.

37. ARM 38.5.4120 requires Central to describe the anticipated cost of implementation, including its specific intraLATA presubscription costs, the vehicle that it intends to use to recover them, and the time frame for recovery. Central did not submit cost support data defining the incremental costs associated with implementing intraLATA equal access. However, Central states that it will notify the Commission if and when it seeks to recover these costs.

38. The Commission will not require Central to provide a cost analysis and is satisfied with Central's proposal. The public interest is best served by waiving the requirement for cost information for Central. If Central incurs substantial unanticipated costs to implement dialing parity and files additional materials to support a surcharge, the Commission will address cost recovery at that time.

CENTRAL'S REVISED PLAN

39. Central filed a revised implementation plan on February 4, 1999. The revised plan addressed most of the concerns identified above and is approved with the further modifications related to business office practices/contact handling as discussed above.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Central is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED that Central's intraLATA dialing parity implementation Plan is approved as discussed herein.

DONE AND DATED this 18th day of February, 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.